

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DARIAN OWENS,

Case No. 3:21-cv-00307-MMD-CSD

**Petitioner,**

## ORDER

v.

WILLIAM A. GITTERE, *et al.*,

## Respondents.

This counseled habeas matter comes before the Court on Petitioner Darian Owens's Motion to Dismiss Unexhausted Claims (ECF No. 38).

On April 5, 2023, the Court found the petition in this action to be mixed, containing both exhausted and unexhausted claims. (ECF No. 35.) The Court informed Petitioner of his three options: (1) file a motion to dismiss seeking partial dismissal of Ground 1(B) and the substantive allegations in Ground 3; (2) file a motion to dismiss the entire petition without prejudice in order to return to state court to exhaust Ground 1(B) and the substantive allegations in Ground 3; and/or (3) file a motion for other appropriate relief, such as a motion for a stay and abeyance asking this Court to hold his exhausted claims in abeyance while he returns to state court to exhaust Ground 1(B) and the substantive allegations in Ground 3. (*Id.* at 11-12.)

Petitioner filed the motion informing the Court of his intent to dismiss Ground 1(B) and the substantive allegations in Ground 3 and pursue his remaining claims. No opposition having been filed by Respondents and the time for doing so having expired, Petitioner's Motion to Dismiss (ECF No. 38) is granted.

It is therefore ordered that Ground 1(B) and the substantive allegations in Ground 3 are dismissed without prejudice as unexhausted and by Petitioner's request.

It is further ordered that Respondents will have 60 days to answer the remaining

1 claims of the petition in this case.

2 It is further ordered that Petitioner will have 30 days following service of the answer  
3 to file and serve a reply brief.

4 It is further ordered that in the answer, Respondents must specifically cite to and  
5 address the applicable state court written decision and state court record materials, if any,  
6 regarding each claim within the response as to that claim.

7 It is further ordered that any additional state court record and related exhibits must  
8 be filed in accordance with LR IA 10-3, LR IC 2-2, and LSR 3-3 and include a separate  
9 index identifying each additional exhibit by number or letter. The index must be filed in  
10 CM/ECF's document upload screen as the base document to receive the base docket  
11 number (e.g., ECF No. 10). Each exhibit will then be filed as "attachments" to the base  
12 document—the index—to receive a sequenced sub-docket number (e.g., Exhibit A (ECF  
13 No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth). If the exhibits  
14 will span more than one filing, the base document in each successive filing must be either  
15 a copy of the index or volume cover page. See LR IC 2-2(a)(3)(A).

16 It is further ordered that, notwithstanding LR IC 2-2(g), paper copies of any  
17 electronically filed exhibits—for this case—*need not* be provided to chambers or to the  
18 staff attorney, unless later directed by the court.

19 DATED THIS 30<sup>th</sup> Day of May 2023.

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21 MIRANDA M. DU  
22 CHIEF UNITED STATES DISTRICT JUDGE

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